

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 740 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

J R SHAH & CO., THRO' R R SHAH

Versus

THE COLLECTOR, JUNAGADH.

Appearance:

MR ND NANAVATI for Petitioner

Mr. Sudhansu S. Patel, AGP for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 24/08/2000

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order dated 6th August 1986 passed by the Deputy Secretary in Revision Application No. 253 of 1987 partly allowing the same and forfeiting 125 tins of oil, and prays for issuance of appropriate writ.

2. The facts, which led the petitioner to prefer

this petition, may in brief be stated. The petitioner is a registered partnership firm and deals in edible oil taking the licence. On 27th June 1987 the Deputy Mamlatdar at Veraval inspected the premises of the petitioner and found several irregularities. The stock mentioned in the Notice Board was not tallying with the actual stock and there was a difference of about 9 Kilograms. The facts about the rate were also not mentioned in the Notice Board. When the stock was tallied, 118.460 K.Grams oil was found short. The last crushing process was taken on hand on 29th April 1987 and thereafter the Mill was closed. Within two months, thereafter the petitioner had sold 42 tins and about 1000 tins were kept for profiteering motive by hoarding & abstaining from selling to the customers. A report was then made to the Collector, Junagadh. A show cause notice on 9th July 1997 was given to the petitioner. The petitioner appearing before the Collector submitted that in fact there was no irregularity but if at all that was assumed to be so the same was purely technical irregularity and no action against the firm was required to be taken etc. The Collector thereafter seized 500 tins of oil passing the order on 19th August 1987. Being aggrieved by such order, the petitioner preferred the Revision Application No. 253/87. The Deputy Secretary partly allowed the revision, and instead of seizure of 500 tins of oil, he ordered to seize 25% of 500 tins, i.e. 125 tins of oil. The said order is under challenge in this petition.

3. It is the contention of the learned advocate representing the petitioner that proper opportunity to submit was not given, the report on which the Collector has drawn his conclusion was not given to the petitioner for studying the allegation against it and making appropriate submission before him. It is also the submission of the learned advocate that the authorities have scrawled and without considering all the documents & materials on record, on the basis of conjectures and inferences the order is passed with the result serious injustice is caused to the petitioner.

4. Mr. Sudhansu Patel, the learned AGP has supported the order and urged to dismiss the application.

5. This is the petition under Article 226 of the Constitution of India and, therefore, considering my scope of enquiry, it would not be just and proper on my part to inquire into the factual aspects of the case and dissect the merits thereof. Remaining within the four corners of Article 226 of the Constitution of India, I

have to see whether any of the fundamental rights is violated, or any enforcement of the legal right is necessary, or the authority has acted in conformity with the principles of natural justice, or there is abridgement of procedure, or there is determination on extraneous consideration, or the order is passed in bad faith or without jurisdiction. This is what is also made clear by this Court in the case of Mukeshbhai Rajendrabhai Shah and Others Vs. Additional Development Commissioner - 1992 (2) G.L.H. 969.

6. Keeping my such scope of enquiry in mind, I have heard the learned advocates representing the parties and perused the orders in question as well as the materials placed before me. It appears, that on the basis of conjectures and inferences, without taking into consideration the materials placed, the order is passed. It is not made clear whether the customers were available and despite the said fact the petitioner preferred to abstain from selling. Virtually, the authorities have scrawled and, without considering the materials placed, on the extraneous consideration, the order is passed. When that is so, the interference of this Court is necessary and the case is required to be referred back to the Collector for a fresh consideration with a direction that he shall, affording a reasonable opportunity to the petitioner, and considering the materials placed before him, pass the appropriate order.

7. In the result, this application is allowed. The order passed by the Collector on 27th July 1987, and also the order passed in Revision on 6th August 1988, are hereby quashed and set aside. The matter is remanded to the Collector, Junagadh, for fresh hearing. The Collector, Junagadh, shall, affording every reasonable opportunity to the petitioner, and, considering the materials placed before him, pass the appropriate order in the matter. Till the order is passed, the security furnished by the petitioner, as per this Court's order dated 24th October 1989 shall continue to remain in force. The Collector shall dispose of the case within four months from the receipt of the writ. Rule accordingly made absolute.

rmr. -----